

AMENDED IN SENATE APRIL 28, 1997

**SENATE BILL**

**No. 641**

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**Introduced by Senator Polanco**

February 25, 1997

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An act to amend Section 1270.1 of the Penal Code, relating to bail, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 641, as amended, Polanco. Pretrial release: failure to appear.

Existing law requires that a hearing be held before any person who is arrested for a violent felony or certain other offenses involving spousal rape, domestic violence, or harassing and threatening another person is released on bail in an amount that is more or less than the amount contained in the schedule of bail for the offense, or on his or her own recognizance.

This bill would add persons who are arrested for serious felonies or who ~~previously~~ *within the previous 5 years* have failed to appear when released on bail or on their own recognizance *following arrest and charging of a felony offense*, to whom that provision applies. The bill would establish a rebuttable presumption that those persons are ineligible to be released on their own recognizance, and would require the court to appoint defense counsel for the hearing. By imposing increased duties on local criminal justice systems that are equivalent to those imposed by the

establishment of a new crime, the bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 1270.1 of the Penal Code is  
2 amended to read:

3 1270.1. (a) Before any person who is arrested for any  
4 of the following crimes may be released on bail in an  
5 amount that is either more or less than the amount  
6 contained in the schedule of bail for the offense, or may  
7 be released on his or her own recognizance, a hearing  
8 shall be held in open court before the magistrate or judge:

9 (1) A serious felony, as defined in subdivision (c) of  
10 Section 1192.7, or a violent felony, as defined in  
11 subdivision (c) of Section 667.5.

12 (2) A violation of Section 262, 273.5, or 646.9.

13 (3) A violation of paragraph (1) of subdivision ~~(e)~~ (e)  
14 of Section 243.

15 (4) Any ~~crime, if he or she previously~~ *felony, if within*  
16 *the previous five years, he or she* has failed to appear in  
17 court after being released on bail or on his or ~~her own~~  
18 ~~recognizance, including persons who were arrested for a~~  
19 ~~violation of Section 11357 of the Health and Safety Code~~  
20 ~~or Section 14601 of the Vehicle Code.~~ *her own*  
21 *recognizance following arrest and charging of a felony*  
22 *offense.*

23 (b) At the hearing, it shall be a rebuttable  
24 presumption that a person described in this section is  
25 ineligible for release on his or her own recognizance. The

1 prosecuting attorney and defense attorney shall be given  
2 a two court-day written notice and an opportunity to be  
3 heard on the matter. If the defendant does not have  
4 counsel, the court shall appoint counsel for purposes of  
5 this section only. The hearing required by this section  
6 shall be held within the time period prescribed in Section  
7 825.

8 If the judge or magistrate sets the bail in an amount that  
9 is either more or less than the amount contained in the  
10 schedule of bail for the offense, or if the judge or  
11 magistrate releases the defendant on his or her own  
12 recognizance based on a finding that the presumption  
13 against the release has been rebutted by defense counsel,  
14 the judge or magistrate shall state the reasons for that  
15 decision and shall address the issue of threats made  
16 against the victim or witness, if they were made, and what  
17 factual evidence rebutted the presumption against  
18 release, in the record. This statement shall be included in  
19 the record.

20 SEC. 2. No reimbursement is required by this act  
21 pursuant to Section 6 of Article XIII B of the California  
22 Constitution because the only costs that may be incurred  
23 by a local agency or school district will be incurred  
24 because this act creates a new crime or infraction,  
25 eliminates a crime or infraction, or changes the penalty  
26 for a crime or infraction, within the meaning of Section  
27 17556 of the Government Code, or changes the definition  
28 of a crime within the meaning of Section 6 of Article  
29 XIII B of the California Constitution.

30 Notwithstanding Section 17580 of the Government  
31 Code, unless otherwise specified, the provisions of this act  
32 shall become operative on the same date that the act  
33 takes effect pursuant to the California Constitution.

34 SEC. 3. This act is an urgency statute necessary for the  
35 immediate preservation of the public peace, health, or  
36 safety within the meaning of Article IV of the  
37 Constitution and shall go into immediate effect. The facts  
38 constituting the necessity are:

1 In order to reduce the number of defendants who fail  
2 to appear for hearings or trial, it is necessary that this act  
3 take effect immediately.

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